1227.

SUPREME COURT OF THE UNITED STATES.

No. 179.

THE WASHINGTON, ALEXANDRIA, & GEORGETOWN STEAM-PACKET COMPANY, PLAINTIFFS IN ERROR,

vs.

FREDERICK E. SICKLES AND TRUMAN COOK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA, HOLDEN IN AND FOR THE COUNTY OF WASHINGTON.

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Writ of error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the judges of the circuit court of the United States for the District of Columbia, sitting for the county of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you, or some of you, wherein Frederick E. Sickles and Truman Cook are plaintiffs, and the Washington, Alexandria, and Georgetown Steampacket Company is defendant, a manifest error hath happened to the great damage of the said company, as by its complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in said Supreme Court to be then and there held; and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, which of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court.

Issued this second day of June, 1847.

W. BRENT,
Clk. Ct. Ct. Wash. Co., D. C.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Frederick E. Sickles and Truman Cook, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the District of Columbia, for the county of Washington, wherein the Washington, Alexandria, and Georgetown Steampacket Company is plaintiff in error, and you are defendant in error, to shew cause, if any there be, why judgment rendered against the said Washington, Alexandria, and Georgetown Steampacket Company should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. William Cranch, chief judge of the circuit court of the District of Columbia, this second day of June, 1847.

W. CRANCH.

Service acknowledged.

JOS. H. BRADLEY,
Plaintiffs' attorney.

Copy of appeal bond.

Know all men by these presents, that we, the Washington, Alexandria, and Georgetown Steampacket Company, William Gunton and Archibald Henderson, both of the city of Washington, in the District of Columbia, are held and firmly bound unto Frederick E. Sickles and Truman Cook, in the sum of four thousand five hundred dollars, current money, to be paid to the said Sickles and Cook, their certain attorney, executors, administrators, and assigns; to which payment, well and truly to be made and done, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this second day of June, 1847.

Whereas lately, at a circuit court of the United States, for the District of Columbia, sitting for the county of Washington, in a suit depending in the said court, wherein the said Frederick E. Sickles and Truman Cook were plaintiffs, and the Washington, Alexandria, and Georgetown Steampacket Company was defendant, judgment was rendered against the said defendant, and having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Frederick E. Sickles and Truman Cook, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next.

Now, the condition of the above obligation is such, that if the said Washington, Alexandria, and Georgetown Steampacket Company shall prosecute said suit with effect, and answer all damages and costs if it fails to make its plea good, then the above obligation to be void; otherwise to be and remain in full force and virtue.

T. GUNTON, [SEAL.]
W. GUNTON, [SEAL.]
ARCH. HENDERSON. [SEAL.]

Signed, sealed, and delivered, in the presence of—
S. B. BOARMAN,
H. B. SWEENY.

Approved. W. CRANCH.

Style of court.

DISTRICT OF COLUMBIA, *ss:*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of March, being the twenty-second day of the same month, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the United States the seventy-first. Present, William Cranch, chief judge; the honorable James S. Morsel and James Dunlop, assistant judges; Alexander Hunter, esquire, marshal; William Brent, clerk.

In the records of the proceedings of the said court, among others, are the following, to wit:

Parties.

FREDERICK E. SICKLES and Truman Cook,
vs.
THE WASHINGTON, ALEXANDRIA, AND GEORGETOWN STEAMPACKET COMPANY.

Be it remembered, that heretofore, to wit, on the nineteenth day of March, in the year of our Lord one thousand eight hundred and forty-six, the said plaintiffs, by Joseph H. Bradley, esqr., their attorney, prosecuted and sued forth out of the circuit court here the United States writ of subpœna, to the marshal of the District aforesaid directed, in the words and of the tenor following, to wit:

Subpœna.

The United States of America, to the marshal of the District of Columbia, greeting:

We command you that you summon the Washington, Alexandria, and Georgetown Steampacket Company, to be and appear before the circuit court of the District of Columbia, to be held for the county aforesaid, at the city of Washington, on the fourth Monday of March instant, to answer unto Frederick E. Sickles and Truman Cook, in a plea of trespass on the case, and so forth. Hereof fail not at your peril, and have you then and there this writ.

Witness William Cranch, esquire, chief judge of our said court, at the city of Washington, the first day of December, anno domini one thousand eight hundred and forty-five.

Issued the 19th day of March, 1846.

W. BRENT, *Clerk.*

BRADLEY.

And the aforesaid plaintiff, by their attorney aforesaid, on the day of prosecuting and suing forth of the aforegoing writ, declared against the said defendants in the plea aforesaid, in form following, to wit:

Narration.

Whereupon the said plaintiffs, by Joseph H. Bradley, their attorney, complain, for that whereas heretofore, to wit, on the first day of July, 1844, the said defendants, at the county aforesaid, being the owners of a certain steamboat called the Columbia, and running in the Potomac river and Chesapeake bay, in consideration that the said plaintiffs being the proprietors of a certain machine called "Sickles' cut-off," designed to effect a saving in the consumption of fuel for steam engines, would place one of the said machines on the said steamboat Columbia; undertook and promised the said plaintiffs to apply the whole value of the saving of the fuel on board the said boat, which should be effected by

the said machine, in the first place, to pay the cost and expenses of building the said machine and putting the same on the said boat; and thereafter, and after having paid the said costs and expenses, that they, the said defendants, would, so long as the said steamboat should continue to be employed by the said defendants, if the patent right for the said machine should continue so long, pay to the said plaintiffs three-fourths of the saving in fuel caused by said machine. And that the saving caused by the said machine, called the cut-off, on board the said boat, should be ascertained at any time the said plaintiffs should desire it, in the following manner, to wit: by taking equal quantities of wood, and using the same first with one and then with the other cut-off, (the defendants then having in use on board their said boat a machine called the throttle,) to shew with which the boat would run the longest under the same circumstances. And thereupon the said plaintiffs, confiding in the said promises and undertakings of the said defendants, at great cost, to wit, at the cost of two hundred and fifty dollars, did erect and build, and place on the said steamboat Columbia, at the request of the defendants, a machine called "Sickles' cut-off;" which said machine, and the same hath ever since, to wit, from the 20th day of August, 1844, continually, to the beginning of this action, been used by the said defendants in and upon the said boat; and that, on the 19th day of August, 1845, at the county aforesaid, the said plaintiffs gave notice to the said defendants that they would on the next day, that is to say, on the 10th day of August, 1845, they desired to make the said experiment in the said agreement mentioned, to test the relative value of the said machine; and, for that purpose, that one of the said plaintiffs would go from Washington to Baltimore, in the said boat, on the said 25th August, 1845, and make the said experiment; and the said defendants by their president, did then and there assent thereto, and did direct the officers of the said boat, or some of them, to aid in conducting the said experiment; and the said plaintiffs in fact further say, that one of the said plaintiffs, to wit, the said Truman Cook, did, on the said 20th day of August, 1845, proceed in the said boat from the said city of Washington to Baltimore, in the State of Maryland, and did, on the said voyage, with the assistance of the officers of the said boat, make the said experiment; and did take two piles of wood of equal dimensions and under like circumstances; the pile employed in the use of the throttle cut-off was burned in two hours and seven minutes; and the pile used by the cut-off of the plaintiffs lasted three hours and fifteen minutes, shewing a saving in favor of the latter of 34 and $\frac{175}{100}$ per cent., of all which the said defendants had due notice; whereby a great amount and value of fuel has been saved by the said defendants, to wit, the amount of twenty-five hundred dollars; and the said plaintiffs in fact say, they were and are entitled to recover of and from the said defendants, out of the said sum of money, as well the said sum of two hundred and fifty dollars, as and for the costs and expenses of erecting and building the said machine and placing the same on the said steamboat, as also the further sum of sixteen hundred and eighty dollars and fifty

cents, being three-fourths of the said savings within said period of time after the said machine was put in operation on the said boat, and while the same was used by the said defendants to the time of the bringing this suit; and being so entitled, the said plaintiffs, to wit, on the day and year aforesaid, and often afterwards, at the county aforesaid, demanded the whole of the said two sums of money, to wit, the sum of nineteen hundred and thirty-seven dollars and fifty cents of and from the said defendants, and the said defendants utterly neglected and refused to pay the same or any part thereof to the said plaintiffs, and still refuse, to the damage of the plaintiffs four thousand dollars; and therefore they sue.

JOS. H. BRADLEY,
For plaintiffs.

Add a count for putting the machine on the boat at the request of the defendants with a quantum meruit.

JOS. H. BRADLEY,
For plaintiffs.

March term, 1846.

At which mentioned fourth Monday of March, in the year of our Lord one thousand eight hundred and forty-six, and the day of the return of the aforegoing writ, come again into the circuit court here the said plaintiffs, by their attorney aforesaid; and the marshal of the district aforesaid, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit:

Marshal's return and defendants' appearance.

"Summoned." A. HUNTER, *Marshal.*

And the said defendants being called appear in court here, by Johnson Hellen, esq., their attorney; and thereupon, on motion of the said plaintiffs, by their attorney aforesaid:

Rule plea.

It is ruled by the court here that the said defendants answer to the declaration aforesaid of the said plaintiffs in the plea aforesaid, or judgment by the court here will be entered against them in default thereof; and thereupon the said defendants, by their attorney aforesaid, defend the force and injury when, and so forth, and pray leave of the court here to imparle until the third Monday of October next, and then to answer to the declaration aforesaid of the said plaintiffs in the plea aforesaid, and to them it is granted; the same day is given to the said plaintiffs also.

October term, 1846.

At which mentioned third Monday of October, in the year of our Lord one thousand eight hundred and forty-six, to which said day the said defendants had leave to imparle, and then to answer to the said declaration aforesaid of the said plaintiffs in the plea aforesaid, come again into

the circuit court here as well the said plaintiffs, by their attorney aforesaid, as the said defendants, by their attorney aforesaid; and the said defendants, by their attorney aforesaid, as before defend the force and injury when, &c.,

Non assumpsit.

and say that they did not assume upon *himself* in manner and form as the said plaintiffs above against them have declared, and of this they put themselves upon the country.

Issue joined.

And the said plaintiffs, by their attorney aforesaid, in like manner, and so forth:

Venire facias.

Therefore, let a jury thereon appear before the court here on the fourth Monday of March next, by whom, and so forth, and who neither, and so forth, to recognise, &c., because as well, and so forth; the same day is given to the said parties then and there, and so forth.

March term, 1847.

And now at this day, to wit, the said fourth Monday of March, in the year of our Lord one thousand eight hundred and forty-seven, come again into the circuit court here as well the said plaintiffs, by their attorney aforesaid, as the said defendants, by their attorney aforesaid; whereupon, for trying the issue aforesaid, it is ordered by the court here that twelve persons from the panel of petit jurors, returned to the court here by the marshal of the district aforesaid, be called, who, being called, come, to wit:

Jury.

1 John Suter,	7 Samuel Stettinius,
2 Robert W. Bates,	8 Robert Brooke,
3 Peyton Randolph,	9 Orris S. Payne,
4 Jabez B. Rooker,	10 Gabriel Barnhill,
5 Philip Ennis,	11 John Payne,
6 Thomas Jackson,	12 Jonathan T. Walker.

Who, being duly impanneled and sworn to say the truth in the premises, upon their oath, do say,

Verdict.

That the said defendants did assume upon themselves in manner and form as the aforesaid plaintiffs above against them have declared, and they assess the damages of the said plaintiffs, sustained by occasion of the non-performance of the promise and assumption aforesaid:

Damages.

to the sum of eighteen hundred dollars, current money, with interest from the ninth day of November, eighteen hundred and forty-five.

Judgment.

Therefore, it is considered by the court here, that the aforesaid plaintiffs recover against the said defendant, as well the sum of eighteen hundred dollars, current money, their damages aforesaid, with interest as aforesaid, in form aforesaid assessed, to be sustained by occasion of the non-performance of the promise and assumption aforesaid,

Costs.

as the sum of ninety dollars and sixty-three cents, by the court here unto them the said plaintiffs, on their assent adjudged for their costs and charges by them about their suit in that behalf laid out and expended; and the said defendant in mercy, and so forth.

Test: W. BRENT, *Clerk.*

Mem.

Memorandum: Before the jurors aforesaid withdrew from the bar of the court here, the said plaintiffs and defendants, by their attorneys aforesaid, filed in court here the following statements of evidence and bills of exception:

Plaintiffs' statement of evidence.

SICKLES & COOK
vs.
STEAMBOAT CO.

On the trial of this cause the plaintiffs, to maintain the issue on their part joined, offered and gave evidence tending to shew that, on or about the 18th day of June, 1844, at the county aforesaid, the said plaintiffs being the owners of the patent right to a certain machine called a cut-off, of which the said Frederick Sickles was the inventor, and the said defendants being the owners of the steamboat called the Columbia, on which they had in use a certain machine called the throttle cut-off, the object of both of said machines being to save the consumption of fuel in the use of steam engines, the said plaintiffs made and entered into a certain contract with William Gunton, the president of the Steamboat company, and the general agent thereof, whereby it was agreed that the said plaintiffs should construct and place on board the said steamboat one of their said machines at their own cost and expense; that the same should be tried, and, if it produced any saving, that the cost of putting the said machine in operation on board the said boat, not to exceed two hundred and fifty dollars, should be first paid out of the savings of fuel effected by the said machine; that the said machine should be used by the defendants during the continuance of the patent, if the said boat should last so long; and, after the payment of the said costs and expenses of putting the said machine in operation on board the said boat, the savings caused thereby, in the consumption of fuel, should be divided between the said plaintiffs and defendants in the proportion of one-fourth to the defendants and three-fourths to the plaintiffs; and, in order

to ascertain the amount of such savings, an experimental trial should be made at any time the plaintiffs should direct it, after the said machine was in successful operation, in the following mode: Two piles of wood should be taken of equal dimensions; one pile should be used with one of the cut-offs, and the other pile with the other cut-off, under like circumstances, and the length of time required in the consumption of the said piles of wood, respectively, should be taken as the evidence of the difference in the amount of savings in the one over the other; and if the said machine produced no saving, it was to be taken off, and the boat restored to its former condition at the expense of the plaintiffs.

That the said contract was wholly in parol, and, within three days after it was made, the plaintiffs entered into a contract in writing with T. W. and R. C. Smith, of Alexandria, by the said plaintiffs, as follows, (copied in page 26;) and the said defendants caused their said boat to lie at Alexandria to have the said machine fitted to her engine; that the said T. W. & R. C. Smith proceeded with all convenient despatch to make the said machine, and put the same on board the said boat, at the cost of $242; that the same was completed and placed on board the said boat, and in complete action, on the ninth day of November, 1844, with the knowledge of the defendants, and that the same was continually thereafter, to the bringing of this suit, used by the said defendants on board the said boat.

That, on the 19th day of August, 1844, the said Truman Cook, one of the said plaintiffs, gave notice, on board the said boat, to the said defendants, by William Gunton, president as aforesaid, that they desired on the next day, the same being the regular day for the passage of the said boat from the city of Washington to Baltimore, to go on the said trip and make the experiment, provided by their said contract, to ascertain the saving caused by the said machine; and the said William Gunton, president as aforesaid, directed the officers of the said boat, or one of them, to take care that the said Cook did not throw sand in his eyes; and, on the said 20th day of August, 1844, the said Cook, one of said plaintiffs, did, in fact, go from the city of Washington to Baltimore on board the said boat, and the said experiment was, in fact, made under the superintendence of the officers of said boat on behalf of said defendants, and by the said Cook on behalf of said plaintiffs, and the whole was, at the request of plaintiffs, carefully observed and noted by Capt. Job Carson, for many years mate and captain of *of* a steamboat, and the result of the said experiment was, that the said machine of said plaintiffs caused a saving of fuel, over and above the said "throttle cut-off," of 34 $\frac{174}{196}$ per cent., and full, minute, and accurate minutes of the said experiment, and of the result thereof, were taken and made in writing by the officers of the said boat, or one of them; that the average consumption of wood on her said trip to Baltimore was cords, and on her trip from Baltimore was cords, and the average price of wood, during the periods she ran, from the 9th November, 1844, to the bringing of this suit, was $, and estimating the saving by the said

machine at one-third, it amounted to $ up to the impetration of the writ in this case.

The plaintiffs further gave evidence to show, by practical and scientific engineers and builders of steam engines, that the said experiment was the only mode by which the said savings could be ascertained with any degree of certainty; that it had been resorted to and tried by them, and one of them further proved that, on the experiment conducted by him to test the difference between "Sickles' cut-off" and the "throttle cut-off," in a large steamboat belonging to Baltimore, and having an engine of the same construction as that on board the Columbia, and the saving of the former over the latter was forty-two per cent.; and they further proved that they were acquainted with both of the said machines, both theoretically and practically, and that no engineer would hesitate to say that "Sickel's cut-off" was far superior to the throttle, and to any other with which they were acquainted.

They further gave evidence to shew that the said machine had been applied by the plaintiffs to four other steamboats belonging to the port of the city of Washington, and the saving of fuel caused thereby ranged from 18 to 33 per cent. on board the said boats respectively, and that the saving could not be ascertained by the amount of wood actually consumed without knowing and estimating the condition of the hull, and engine, and machinery, the state of the weather, the water, the freight, and the speed of the boat; and the only test was the experiment aforesaid, or one conducted on scientific principles which would give a proximate result.

To introduction of which said evidence by practical and scientific engineers and others, builders of steam engines, tending to shew the operation of the said cut-off, and the savings resulting therefrom on other boats, the defendants, by their counsel, objected, because the same was inapplicable to the issue on the first count in the plaintiffs' declaration, and that the same could not be offered on the general counts, unless the plaintiffs abandoned the first.

Which objection the court overruled, and allowed the said evidence to go to the jury; to which ruling of the court the defendants, by their counsel, excepted, and prayed that this *his* bill of exceptions may be signed and sealed; which is done this 25th day of March, 1847.

JAS. S. MORSELL, [SEAL.]
JAS. DUNLOP. [SEAL.]

Defendants' statement of evidence.—Defendants' statement.

SICKLES and COOK
vs.
STEAMBOAT Co.

The defendants, to support the issue on their part, called William Gunton, late president of the defendants' company, who being first sworn on his voire dire, stated that he had resigned the office of president of said company, and sold and transferred all the stock he held therein, and that he was in no way interested in the event of this suit between

the said plaintiffs and the defendants; and the said witness being sworn in chief, testified that he did not, as president of said company, or otherwise, make with the said plaintiffs the contract for the use of the cut off called Sickles' cut-off, on board the defendants' steamboat called the Columbia, as the same is set forth in the first count in the plaintiffs' declaration; that some time in the spring of the year 1844 he first met with Truman Cook, one of the plaintiffs, and after having conversed several times with the said Cook on the subject of the application of the said cut-off to the engine on board the said boat, the said Cook stated that he was very desirous to bring the cut-off to the favorable notice of the officers of the Government, with the view of introducing the same into use on board the national steamships, and other steam vessels sailing on the waters of the river Potomac and the Chesapeake bay; that he, as president of the defendants' company, agreed with the said Cook that he might place, at his own expense, the said cut-off on the engine of the said boat, and that if, on trial of the same on board the said boat, the said cut-off should be approved of, and the defendants should wish to purchase the same, the terms of such purchase should be afterwards determined on between the said parties; but if the said cut-off should not be approved of, or the terms proposed by said Cook for the use of the same by the said defendants on their said boat should be such that the said defendants could not accede thereto, the said Cook was to take the said cut-off from the said boat at his own expense, and restore the engine on the said boat to the same condition in which it was before the application of the said cut-off thereto; that the said cut-off was placed on the said engine pursuant to such last mentioned agreement, and not in pursuance of any such agreement as is mentioned in the first count of the plaintiffs' declaration; that afterwards, and when the witness, still being president of defendants' said company, had had an opportunity to form some idea of the value of the said cut-off, he conversed with said Cook respecting the terms on which the same might be purchased for the use of the defendants on board the said boat, and the said Cook informed the said witness that the defendants should have the use of the said machine on as favorable terms as the same had been disposed of to the owners of the steamboat Augusta, or any other steamboat, but did not then, or at any other time, inform the witness at what price the same had been sold to the said steamboat Augusta, or any other steamboat, or make any such definite proposition for the sale of the said machine to the defendants as would enable him to lay the same before the board of directors of the said company for their approval; and that the defendants have at no time refused the said Cook or the plaintiffs permission to remove the same from the engine on board the said boat, and restore the said engine to its former condition.

The said witness further testified, that he, while president of the defendants' said company, received the following letter, dated 10th January, 1845, from T. W. & R. C. Smith, of Alexandria, who were employed by the said Cook to make the said cut-off and attach the same to the engine on board the defendants' said boat, and who did make and

attach the same to the said engine, (copied in page 28;) that he had never before heard that the said Cook or the plaintiffs pretended to have put the said machine on the engine of the said boat in virtue of any such contract as is referred to in the said letter, and he then being president of the defendants' company addressed the following letter, dated the 11th January, 1844, to said Messrs. Smith, (copied in page 28.)

The defendants further offered evidence tending to prove that within a few days after the date of the last mentioned letter the same was shewn to the said Cook, who read the same; that said Cook did not deny the statements contained therein, but said it was just such a letter as he expected the said William Gunton would write. Also that the said Cook, after the date of the said last mentioned letter, referring to the same in conversation with ——— Randolph, engineer on board the defendants' boat Columbia, said that he had read the said letter from William Gunton to Messrs. Smiths, and it was just such a letter as the said Gunton should have written to them; that the said Cook said in the presence and hearing of ——— Kavanaugh, defendants' agent and clerk on board the said boat, that the said defendants were to be allowed to purchase the said machine, and use the same on board the said boat, on as favorable terms as the Augusta or any other boat had paid for the same; and that on two other occasions said Cook stated in the presence and hearing of ——— Guyther, the captain of the said boat, that the defendants were to have the said cut-off on terms as favorable as any other boat had purchased the same.

The defendants further offered evidence tending to prove (by said William Gunton) that he [said William Gunton] was on board the said steamboat Columbia on the 19th day of August, in the year 1845, and then and there met with the plaintiff Cook; that he was informed the said Cook intended to go in the said boat on the next day from Washington to Baltimore, and thinks he was informed that the said Cook designed to make experiments on the working of the engine of the said boat with the said cut-off and the cut-off which was used with the said engine previous to that of Sickles' being attached thereto, as aforesaid; but he was not then informed by the said Cook that he claimed to be compensated for the use of the said cut-off on the said boat by an allowance of three-fourths, or any portion of the value of the saving effected on board the said boat by the use of the said cut-off, and that his object was to make an experiment on board said boat by the alternate use of the said cut-off and that before used on the said engine, with the view of ascertaining the amount of saving effected by the former, and thereby fixing the rate of his claim on the said defendants pursuant to a contract subsisting between them; and that he was not notified and invited to be present and aid in conducting any such experiments, and that he supposed the same were intended to be made for some private and personal advantage of the said Cook and his partner, in which he, as president of the defendants' company, was not interested; and believing that the said Cook would desire to obtain the certificates of the officers of the said boat to the results of such experiments, he cautioned

them not to let him throw "sand into their eyes;" that he did not himself attend, or authorize any other person in behalf of the defendants to attend and assist in, or superintend the making any such experiments, or to take notes of the result thereof.

Cross examination.

And the said William Gunton, on his cross examination, stated that he never entered into the contract with the plaintiffs testified to by A. T. Smith and Maj. W. B. Scott; that he had no interview with them as testified by them at the steamboat; that the only conversation he ever had in the presence of Mr. Smith with Mr. Cook did not result in any contract, and it was then agreed, if any contract should be made, it should be reduced to writing; does not recollect any conversation in regard to the purchase or use of the machine in presence of Captain Mitchell, and denies it; and he never at any time told him it was a very valuable machine, or words to that effect.

That the machine was put on by his knowledge and consent by the Messrs. Smiths, but he told them repeatedly before writing the letter of the 11th January, 1845, and while they were constructing the machine, the boat would not be liable for it.

That, on the 19th August, 1845, he was on board the steamer Columbia. Cook was there exhibiting a crank machine. That he was troublesome and talkative; and he thought it necessary to come to some *condescension* with him; and he said to Cook: "If your cut-off is as good as you say it is, all your certificates are out of the question; you may fool other people, but you cannot fool me." Cook said he was going round in the boat next day, and gave me notice that he was going to try that experiment. I said I did not care how many experiments he tried, as I had no contract with him which could be affected by them, and said: "You know, Mr. Cook, our agreement is, I am to have it at the same price as the Augusta or any other boat." And he answered: "Yes." I then called on Capt. Rogers, who was present, to recollect that.

That he did say to Mr. Kavanaugh, and perhaps to the engineer, to take care of Cook; he was a smart fellow, and would throw sand in their eyes.

Cannot recollect, but thinks it probable that, on the return of the boat next after the 20th August, he was told of the result of the experiment; but never saw the minutes which were made by Mr. Kavanaugh.

He does not recollect that any one ever stated to him the result; Cook did not.

Has no recollection of, and denies, that he had any conversation with Cook in the Patent office, in the presence of Hazard Knowles, in which he said he would be willing to lease the machine put in the steamer Columbia by Cook at the expense of the plaintiffs, to be paid for out of the savings, and after that divide the savings ¾ to plaintiffs and ¼ to the company.

Says he understood the offer of Cook, to take the same price for the machine as the Augusta paid, as a distinct and binding offer.

And thereupon the plaintiffs re-examined A. T. Smith, who testified that the only contract or agreement, in reference to the use of the said machine, to which he was privy was made on board the Columbia, after the parties had had an interview with Captain Mitchell and others on board the Osceola, in which the same terms were proposed for the construction and use, or $1,000 for the machine alone:

And James Mitchell, who testified that he was present at an interview, between Gunton, Cook, Smith, Scott, and others, on board the Osceola, before the said machine was constructed for the said steamer Columbia, in which Cook proposed to sell the same for $1000, or to construct one on the terms set out in the first count in the plaintiff's declaration; that no contract was made, but he came away, leaving Smith, Cook, Gunton, and Scott together; and that, shortly afterwards, the said machine was begun for the Columbia, and Gunton repeatedly told him it was a very good thing:

And Captain Rogers, of the steamer Powhatan, who testified he was present at the interview to which Gunton refers in his cross examination, when Cook was exhibiting his crank machine and cut-off model on board the Columbia, and heard Gunton tell the officers of the boat to take care that Cook did not throw sand in their eyes; and he says that he has a pretty distinct recollection of what passed, but has no recollection of what is stated by Gunton as to the terms on which he was to have the machine, or that Gunton called on him to notice it.

And R. C. Smith, (being the same one referred to by Gunton, in his cross examination,) who testified that said Gunton never did tell him, before his said letter of the 11th January, 1845, that the steamboat was not liable for the machine, or of the terms of his contract with Sickles & Cook:

And Hazard Knowles, who testified, in May, or that early in June, 1844, the said Gunton and Cook met in his room at the Patent office, and Cook there proposed to put one of the said machines on the engine of the Columbia, at the expense of the plaintiffs, to be paid for out of the first proceeds of the savings, and after that the savings to be divided, ¾ to the plaintiffs and ¼ to the company, to which Gunton acceded; and Cook said he would examine the engine and see him again, and took his address:

And the said plaintiffs further read in evidence the following letters, to wit:

A. T. Smith to William Gunton, dated 5 Sep., 1845 - copied p. 30
Answer of Gunton - - - - - copied in p. 31
A. T. Smith to W. Gunton, dated 1st Dec., 1845 - copied p. 33
Answer of Gunton, dated 3d Dec., 1845 - - copied p. 33
Gunton to Sickles & Cook, dated 14th April, 1846 - copied p. 37
Answer thereto, dated 15th April, 1846 - - - copied p. 37
And the contract between Samuel Bacon and the plaintiffs - - - - - - - - copied in p. 45

And the said defendants, on cross examination of the plaintiffs' witness, offered evidence tending to prove that the contract, mentioned in the first count in the plaintiffs' declaration was made by the said parties on board the said steamboat Columbia; and after the terms thereof had been agreed upon, it was suggested by the attorney of the plaintiffs then present, and who had negotiated or assisted in the negotiation of the said contract, that the same should be reduced to writing and signed by the respective parties, and a copy thereof delivered to each of them; to which suggestion the defendants, by their said president, assented, and the attorney of the plaintiffs undertook to reduce the said contract to writing, but did not; that the witness by whom the facts aforesaid were proved did not understand the said conversation, respecting the reduction of the said agreement to writing, entered into and formed any part of the said contract.

The defendants further offered in evidence the act of incorporation of defendants' said company, (copied in page 39.)

Contract with Thos. W. & R. C. Smith.

Contract between plaintiffs and Thos. W. and R. C. Smith, referred to in plaintiffs' statement, page 15.

Agreement made this 21st day of June, 1844, between Thomas W. & R. C. Smith and A. Thos. Smith, atty. of Sickels & Cook.

The said Thomas W. & R. C. Smith agree to construct and attach to the engine of the steamer Columbia, making trips between Washington, D. C., and Baltimore, Md., a cut-off of the patent of Frederick E. Sickels, of New York, to be made in the best manner and properly attached to the engine of the said steamer, the work to be completed within 30 days from this date, and to be executed according to the directions of Mr. Trueman Cook, one of the proprietors. And the said A. Thos. Smith, as attorney of the said Sickels & Cook, agrees to pay to the said T. W. & R. C. Smith, for making and applying the said cut-off to the engine of the said steamer, the sum of two hundred and twenty-five dollars, out of the first savings of the fuel on board of said steamer, in consequence of the application of said cut-off, that is to say, whenever the quantity of fuel saved in consequence of the application of said cut-off shall amount to the sum of $225, the said A. Thos. Smith, as atty., is to receive from the owners of the said steamer the said sum, and to pay the same over to the said T. W. & R. C. Smith, for the making and application of said cut-off, or the said T. W. & R. C. Smith may receive the said amount directly from the owners of the said boat, and this agreement will be regarded as a receipt to them for the said amount by the said A. Thos. Smith, as attorney for said Sickles & Cook; the said T. W. & R. C. Smith, at the same time giving to the said A. Thos. Smith a receipt in full for the making and application of the said cut-off.

T. W. & R. C. SMITH,
A. THO. SMITH,
Att'y of Sickles & Cook.

Letter from T. W. & R. C. Smith, referred to page 20.

ALEXANDRIA, *Oct.*, 1844.

Steamboat Columbia to T. W. & R. C. Smith.

	For construction and application of Sickles's patent cut-off - - - :	$225 00
Nov. 19	3 hands repairing engine, 3 days, at $2½ :	7 50
Dec. 16	Repairs and alterations to wrought iron work -	3 25
	2 hands repairing engine, 1½ days, at $2½ :	3 12½
	Repairing wrought iron work, do. : :	1 50
		$240 37

Doct. W. GUNTON.

DEAR SIR: Above we hand bill against steamboat Columbia.

The cut-off was to be paid for out of the first savings of fuel; the time you can probably tell by her average savings to this time.

If the Co. is in funds, we would be obliged, if you could advance the amount of the bill, deducting the interest. The cut-off and application cost us more than we are to get for it.

Respectfully yours, T. W. & R. C. SMITH.

January 10, 1845.

His reply.

Doct. Gunton's reply to the above.

WASHINGTON CITY, 11*th January*, 1845.

GENTLEMEN: Your letter of the 10th instant, with a bill against the steamboat Columbia of $240 $\frac{37}{100}$, has been received by me with no little surprise.

The cut-off therein mentioned is not yet, if it ever will be, the property of the Steamboat company. The understanding between Mr. Sickles' agent and myself was, that the cut-off should be placed on the boat at his expense; and, if on trial it should be approved of, the terms of purchase, or of using it, were then to be determined on between us; but if not approved of, or terms should be proposed such as I could not accede to, he was to take it back, and at his expense reinstate the boat in the same condition in which it was before the application of it thereto.

The applying of it to the boat, he said, would not require more than six hours; and, of course, occasion no derangement of her business.

How erroneous this proved you well know, she having been subjected to detention, during several weeks, whilst the work was in progress, causing not only the loss of a considerable amount of back freight, but also much expense in drayage of freight from this city to Georgetown, by reason of her having by such detention been prevented from going there to receive or land freight. From what I learn, the cut-off has not been in use the entire trip more than once or twice, it being continually getting out

of order; and on the last trip, as I understand from Mr. Randolph, he could not use it at all, because the cast iron top is cracked.

Yours, very respectfully, W. GUNTON, *President.*

Messrs. T. W. & R. C. SMITH, *Alexandria, D. C.*

A. Thos. Smith to W. Gunton.

Letter from A. Thos. Smith to Wm. Gunton, referred to page 25.

WASHINGTON, D. C., *5th September*, 1845.

To the President, Directors, and Company of the Georgetown, Washington, and Alexandria Steampacket Company.

GENTLEMEN: I am directed by Messrs. Sickles and Cook to request that a settlement may be made for the use of their patent cut-off, on board your steamer Columbia.

The cut-off has been in successful operation on board that steamer from the 9th November to the 18th December, 1844, and from 1st March, 1845, to the present time; and the saving of fuel has been ascertained by the experiment made by direction of your president on the 20th ult.

The result of that experiment, as reported by those who made it, showed that by the old cut-off 1½ cords of wood lasted 2 hours 7 minutes, the engine making 21 turns; and that with the application of Sickles' cut-off the same quantity of wood lasted 3 hours 15 minutes, the engine making the same number of revolutions; the saving of fuel being 34$\frac{1}{19}$ per cent. The saving per week, without including extra trips, of which many have been made since the application of the cut-off, is 16 cords. It has been in use 27½ weeks up to the time of the experiment. The saving of fuel to that time is 440 cords of wood, which, at $2 38 per cord, amounts to $1,027 20. The agreement was, that Messers. Sickells and Cook were to have three-fourths of the value of the fuel saved by the application of the cut-off, after paying the expenses of its construction out of the first savings of the fuel. The amount due to Messrs. S. & C. can therefore be very readily calculated; and, as they are desirous of leaving the city soon, you will oblige them by making a settlement for the use of the cut-off. I shall be glad to hear from you as early as convenient. I am, very respectfully, your obedient servant,

A. THOS. SMITH,
Attorney for S. & C.

DR. W. GUNTON, *President Georgetown, Washington, and Alexandria Steampacket Company, Washington.*

Dr. Gunton's reply.

Dr. Gunton's reply to the above letter, referred to page 25.

WASHINGTON CITY, *19th September*, 1845.

SIR: The letter addressed to me by you, as attorney of Sickels and Cook, and dated on the 5th inst., was not received by me till this morn-

ing. From its tenor you seem to be under very erroneous impressions, not only as to the terms of the agreement between Mr. Cook and myself in relation to the use of the cut-off on board the steamer Columbia, but as to the length of time it has been in complete operation, and the extent of the saving of fuel effected thereby. The agreement was, that the cut-off should be placed on the boat at Mr. Sickles' expense; and, if on trial it should be approved of, the terms of purchase, or of using it, were then to be determined on between us; but if not approved of, or terms should be proposed such as I could not accede to, he was to take it back, and at his expense reinstate the boat in the same condition in which she was before the application thereto. And the applying of it to the boat, Mr. Cook said, would not require more than six hours, nor occasion any derangement of her business. Instead of six hours the boat was subject to detentions during several weeks whilst the work was in progress, causing not only the loss of a considerable amount of back freight from Georgetown, but also much expense in drayage of freight from this city to that town, by reason of her having by such detentions been prevented from going there to land freight.

After the cut-off was put in operation it was continually getting out of order, and could be used only partially for a considerable time. The saving of the fuel hitherto is not viewed by me as an equivalent for the loss and expenses before alluded to. The experiments made since the cut-off has been in full operation have prepared me to treat for the purchase of the right to use it permanently on board the Columbia, at a fair price, bearing a just relation to the lowest rate at which the right has been sold to the owners of other boats. Any proposition which may be made on the part of Messrs. Sickel & Cook for the sale of such a right will receive due consideration. And if they can make none, such as I can recommend to the directors, the cut-off can be removed from the Columbia on the condition before mentioned; although I shall consider the company as having so far sustained a loss by the experiment. Yours, respectfully,

W. GUNTON.

A. THOS. SMITH, ESQ., *Attorney.*

Smith to Gunton.

A. Thos. Smith to Wm. Gunton, referred to page 25.

WASHINGTON, D. C., 1*st December*, 1845.

SIR: Your letter of the 19th September last, on the subject of the agreement for the use of Sickels and Cook's patent cut-off on board the steamer Columbia was referred to those gentlemen, and I am now instructed by them to say in reply, that they have no desire or intention of rescinding the contract already made with you as President of the Georgetown, Washington, and Alexandria Steampacket Company for the use of the cut-off on the Columbia. They insist upon the performance of your part of the agreement as originally made, and request to

know, at once, whether you are willing to settle with them upon the terms of that agreement.

I am, respectfully, your obedient servant,

A. THOS. SMITH, *Atty. of S. & C.*

WM. GUNTON, ESQ., *President Georgetown, Washington, and Alexandria Steampacket Company, Washington.*

His reply.

Dr. Gunton's reply to the above.

WASHINGTON CITY, *December* 3, 1845.

SIR: I have receive your letter of the 1st instant, wherein, after referring to my reply of the 19th September last to a previous application by you as to the use of the patent cut-off of Messrs. Sickels and Cook on board the Columbia, you say, "that they have no desire or intention of rescinding the contract already made with you as president of the Georgetown, Washington, and Alexandria Steampacket Company for the use of the cut-off on the Columbia. They insist upon the performance of your part of the agreement as originally made; and request to *to* know, at once, whether you are willing to settle with them upon the terms of that agreement."

No contract, stipulating any terms of payment for the use of the cut-off on the Columbia, has ever been made by me, either originally or at any subsequent period. The only agreement made by me respecting the cut-off is correctly explained in my before mentioned letter, and related merely to an experimental application of it to the Columbia on the conditions specified, for the purpose of enabling me to judge of the expediency of a contract for the purchase or use of it if acceptable terms should be proposed; and, in that event, to lay the subject before the board of directors, of which I am the president, for the requisite authority to enter into such a contract.

Mr. Cook has since admitted that such was the understanding, and assured me, (as I have established by conclusive evidence,) that the terms to be proposed for the purchase or use of the cut-off on the Columbia should be as favorable as those for its use on the steamer Augusta, or any other boat; and, on the receipt of a proposition in accordance therewith, I am ready to submit the same, with a recommendation for its acceptance, to the board of directors, as I am, also, any proposition for a settlement for the use of the cut-off on the Columbia up to the present time, having reference to the actual benefit derived therefrom, and due allowance being made to her owners for the losses and expenses sustained by the detentions, &c., adverted to in my former letter. Unless an acceptable proposition for the sale of the right to the future use of the cut-off on the Columbia be now made by Messrs. Sickel and Cook, I shall, in conformity with the aforesaid conditions, soon require, at their expense, its removal, and a reinstatement of the engine of the Columbia in the same condition it was before the cut-off was applied thereto.

Yours, respectfully,

W. GUNTON, *President.*

A. THOS. SMITH, ESQ., *Attorney, &c.*

1237.

Gunton to Smith.

Letter from Wm. Gunton to T. W. & R. C. Smith.

GENTLEMEN: In reply to an application from you, in January last, for the amount of your bill for the construction of Sickels' cut-off, and the application of it to the steamer Columbia, a letter was then addressed by me to you, in which I explained the terms on which, by the understanding between Mr. Sickels and myself, the cut-off was placed upon the boat. Mr. Cook subsequently told me that he was aware of the letter, and that the terms were correctly described in it; and I wish to learn, as near as you can recollect, at what time it was shown by him *by* you. I expect soon to have a settlement with the parties concerned; and when, if your demand has not been already satisfied, I may aid you in obtaining it. An early answer will oblige, gentlemen, yours, very respectfully,

W. GUNTON, *President*.

Messrs. T. W. & R. C. SMITH,
Alexandria.

T. W. & R. C. Smith to W. Gunton.

T. W. & R. C. Smith's reply to the above.

ALEXANDRIA FOUNDRY, *December* 10, 1845.

DEAR SIR: In answer to yours of the 4th, we would state, that our T. W. S. cannot recollect the exact time your letter was shown to Mr. Cook, but thinks it was soon after its receipt.

As there has been some work done for the steamboat since we rendered the bill to you, we have made it up to this time, and enclose it.

Yours, respectfully,

T. W. & R. C. SMITH.

DR. WM. GUNTON, *Washington, D. C.*

Gunton to Sickels & Cook.

W. Gunton to Sickels & Cook, referred to page 25.

As I am, week after week, annoyed by warrants, under a pretended contract never entered into by me, respecting the cut-off placed under your direction on the steamer Columbia, and as I have *repeated* explained in writing, both *both* to Messrs. T. W. & R. C. Smith, of Alexandria, and Mr. A. T. Smith, of this city, your agent or attorney, what the understanding between Mr. Cook and myself was in relation to the subject, and have expressed my willingness to comply therewith, I hereby give you notice, that unless you, within ten days from this date, remove the aforesaid cut-off from the Columbia, and replace, agreeably to that understanding, her machinery in the same condition in which it was immediately before the cut-off was applied thereto, I shall promptly thereafter cause the work to be done at your expense, and hold you liable for the same, in addition to the amount of expense incurred and loss sustained, by reason of the detentions of the Columbia,

mentioned in my letters to your agent, Mr. A. T. Smith, before alluded to.

Washington city, 14th April, 1841.

W. GUNTON, *President.*

Messrs. SICKEL & COOK.

Reply to the above.

Messrs. Sickel & Cook's reply to the above.

DR. WILLIAM GUNTON, *Pres't.*

We have received your note of the 14th inst., and hasten to reply to it, to avoid any future misapprehension on your part of the positions we respectively hold. You have chose[n] to make terms entirely different from those under which we contracted with you; have refused to execute your contract with us; have driven us to the necessity of a suit; and we are now resolved to bring the matter to an issue.

You complain that you are annoyed by warrants. It is your own fault. You say that you have repeatedly [stated] to Messrs. T. W. & R. C. Smith, of Alexandria, and Mr. A. T. Smith, of this city, what the understanding between Mr. Cook and yourself was in relation to this subject, and have expressed yourself willing to comply therewith. We have, as often as occasion and opportunity offered, stated to you, in the plainest terms, that your representations thus made were not the terms of our contract, and have as clearly and distinctly stated to you what that contract was. We now repeat it. We undertook to put Sickel's cut-off on the engine of the steamer Columbia, and offered to receive $1000 for the right to use it. You, seeming to doubt the importance of the invention, declined that offer; and we then offered to put the cut-off on, taking as a compensation for its use the value of three-fourths of the fuel saved by its use, deducting from the first savings $250 for the construction of the machine, the savings to be ascertained by either of us by experiments with our cut-off and the old one attached to the engine of the Columbia, and you were to continue the use of our cut-off, provided we made it work well, so long as the boat continued to belong to your company. These terms you accepted in the most unequivocal manner. We employed the Messrs. Smith to construct the machine. This was all they had to do with it. They did make it, and it was applied, and has operated successfully. Persons were directed on board the boat to make accurate observations of the saving. It was found to be far greater than you had any idea of. We asked for compensation, and you denied the contract. Your own acts have compelled us to bring suit; and, in order to bring the matter to a close after that suit was brought, we took out a warrant against your company, so that either party might, by appeal, bring the question at once before the court for judicial decision. These are resisted on technical grounds, and now you give us notice to remove the cut-off. However much we might be disposed to avoid litigation, and to terminate all controversy by an amicable adjustment,

the course you have taken has determined us, and we now give you notice that we will not only not interfere with the cut-off on board the Columbia, and hereby protest against your interfering with it, but we will every week bring an action to recover the amount of saving coming to us on the terms of our contract with you. Until we can get a judicial decision in the matter, you must choose for yourself.

SICKELS & COOK.

WASHINGTON, 15*th April*, 1846.

Act of incorporation.

Act of incorporation of the Washington, Alexandria, and Georgetown Steam Packet Company, referred to p. 26.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act, all those persons who have already associated and formed, or may hereafter join, a company or limited partnership, under the name and title of the Washington, Alexandria, and Baltimore Steam Packet Company, and their successors, shall be, and they are hereby incorporated, and made a body corporate and politic, by the name and style of the Washington, Alexandria, and Georgetown Steam Packet Company; and, as such, shall continue until the first day of January, one thousand eight hundred and forty-nine; and by that name may sue and be sued, implead and be impleaded, answer and be answered, defend and be defended, in courts of record and other place whatsoever; and by that name may have and hold, purchase, receive, possess, enjoy, and retain, lands, rents, tenements, hereditaments, goods, chattels, and effects, of what nature, kind, or quality soever necessary for the objects of this incorporation, and the same may sell, grant, demise, alien, and dispose of; and by that name shall have, during the continuance of this act, succession, and may make, have, and use a common seal, and the same may break, alter, and renew at pleasure; and shall have power to ordain, establish, and put in execution such by-laws, ordinances, and regulations as shall seem necessary and convenient for the government of the said corporation, not being contrary to law or the constitution thereof; and generally to do, and to execute, all acts necessary or proper for the objects of said incorporation, subject to the rules, regulations, restrictions, limitations, and provisions, herein described and declared.

Sec. 2. And be it further enacted, that the capital stock of the said company shall consist of not exceeding seventy-five thousand dollars, money of the United States, to be divided into shares of one hundred dollars each.

Sec. 3. And be it further enacted, that the affairs of said company shall be conducted by four directors and a president, whose place, if chosen from among their number, shall be supplied by that body. Two of the directors, with the president, shall form a quorum for transacting all the business of the company. In case of the sickness of the

president, or his necessary absence, his place may be supplied by any director whom he, by writing under his hand, may nominate for that purpose; or, in case of his not making such nomination, the board may appoint a president to act during his sickness or absence. The president and directors, who may be in office at the time of the passage of this act, shall continue in office, under and by virtue of this act of incorporation, until others shall be duly chosen in their stead. No person shall *not* be a president or director who is not a stockholder; and a director ceasing to be a stockholder shall cease to be a director. Every stockholder shall be entitled to vote by himself, his agent or proxy appointed under his hand and seal, at all elections, in virtue of this act; and shall have as many votes as he shall have shares.

Sec. 4. And be it further enacted, That a general meeting of stockholders of said company shall be holden on the first Monday of January next, after the passing of this act, and on the first Monday of January in every year thereafter, at such place within the District of Columbia as the president and directors shall appoint, by giving two weeks notice in one or more of the newspapers of the District, for the purpose of electing directors for the ensuing year who shall meet speedily after their election and choose a president; and the president and directors for the time being shall continue in office until others shall be duly elected in their places, and be organized by the assembling of a quorum and the choice of a president. At all elections, the person having the greatest number of votes shall be deemed to be chosen. All elections shall be held under the superintendence of the president of the company for the time being, and four stockholders, not being at the time directors, appointed by the board of directors, any three of whom shall be the judges thereof; and who shall immediately thereafter notify the persons elected, and make a return thereof to the directors at their first meeting. Should two or more persons have the same number of votes, the other individuals elected directors shall determine by ballot, from among said persons, who shall be the director or directors. All elections shall be opened at 10 o'clock in the forenoon, and closed at three in the afternoon.

Sec. 5. And be it further enacted, That the president and directors shall have full power to make, revise, alter, and annul all such rules, orders, by-laws, and regulations, for the government of the said corporation, and that of its officers, servants, and affairs, as they shall from time to time think expedient; and to use, employ, and dispose of the funds and property of the said company, for the interest and benefit of the stockholders, and agreeably to the objects of the said incorporation.

Sec. 6. And be it further enacted, That the books, correspondence, and papers of the company shall at all times be subject to the inspection of the directors.

Sec. 7. And be it further enacted, That the President and directors shall have power to appoint all officers or servants requisite for executing the business of the said company, and to establish the compensation to be made to the president, and to the other officers or servants of the

said company respectively; but no compensation shall be given to a director for his services, except by a vote of the stockholders in a general meeting.

Sec. 8. And be it further enacted, That the president and directors shall have power to call a general meeting of the stockholders, for purposes concerning the interests of the company, giving at least two weeks' notice in one or more newspapers of the District.

Sec. 9. And be it further enacted, That the shares of the capital stock, at any time owned by any individual stockholder, shall be transferrable only on the books of the company, according to such rules as may, conformably to law, be established in that behalf by the president and directors; but all debts actually due to the company by a stockholder requesting a transfer, must be satisfied before such transfer shall be made.

Sec. 10. And be it further enacted, That the dividends of the profits of the company, or so much of said profits as shall be deemed expedient and proper, shall be declared half yearly, in the second week in January and July, in each year; the amount of said dividend to be from time to time determined by the president and directors, and in no case to exceed the amount of the nett profits actually acquired by the company, so that the capital stock of said company shall never be impaired by dividends.

Sec. 11. And be it further enacted, That if the said directors shall at any time wilfully and knowingly make or declare any dividend which shall impair the capital stock, all the directors present at the making or declaring of said dividend, and consenting thereto, shall be liable, in their individual capacities, to the company for the amount or proportion of said capital stock so divided by the said directors; and each director, who shall be present at the making or declaring of such dividend, shall be deemed to have consented thereto, unless he shall immediately enter, in writing, his dissent on the minutes of the proceedings of the board.

Sec. 12. And be it further enacted, That if any vacancy shall at any time happen among the directors, by death, resignation, or otherwise, the rest of the directors, for the time being, shall elect a director to fill the vacancy.

Sec. 13. And be it further enacted, That in case it should at any time happen that an election of directors should not be made on any day when pursuant to this act it ought to have been made, the said corporation shall not, for that purpose, be deemed to be dissolved; but it shall be lawful, on any other day, to hold and make an election of directors, at a meeting to be called in such manner as shall be prescribed by the laws and ordinances of said corporation.

Approved 3d March, 1829.

Articles of agreement.

Articles of agreement between plaintiffs and Samuel Bacon, referred to page 25, to wit:

Articles of agreement made and concluded this eighteenth day of February, A. D. one thousand eight hundred and forty-five, between Frederick E. Sickles and Truman Cook, both of the city of New York, of the one part, and Samuel Bacon, of the City of Washington, D. C., President of the Washington and Norfolk Steam Packet Company, of the other part.

Whereas the said Frederick E. Sickles and Truman Cook are the owners of a certain invention for cutting off steam in steam engines, known as Sickles' Cut-off, for which a patent was obtained from the United States of America, on the 20th day of May, A. D. 1842, for the term of fourteen years; which said patent cut-off the said Samuel Bacon, president as aforesaid, is desirous of having applied to the engine of the steamer Osceola, owned by the said company: Now, therefore, for and in consideration of the sum of one thousand dollars, to be paid by the party of the second part to the parties of the first part, as soon as the said cut-off shall be in successful operation on board the said steamer Osceola; or for the two-thirds of the value of the fuel that may be saved in consequence of the application of the said cut-off to the engine of the said steamer; the said parties of the first part hereby agree to sell and assign to the said party of the second part the right to use the said patent cut-off on board the said steamer Osceola, for and during the remainder of the said term of fourteen years. And it is further agreed by the parties hereto that the saving of fuel consequent on the application of the said patent cut-off to the engine of the said steamer Osceola, shall be determined in such manner as the said parties of the first part shall designate and authorize. And the said party of the second part hereby agrees to accept the right to use the said patent cut-off on board the said steamer Osceola, upon the terms and conditions hereinbefore stipulated, and to pay the expense of the making and application of the said cut-off.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

FREDERICK E. SICKLES, [SEAL.]
By his attorney, Truman Cook.
TRUMAN COOK, [SEAL.]
SAM'L BACON, [SEAL.]
Pres't of Washington and Norfolk Steampacket Co.

Sealed and delivered in the presence of—
ALFRED SCOTT,
FRANCIS B. LORD,
A. THOS. SMITH.

Defendants' 1st bill of exceptions.—Defendants' 1st bill of exceptions.

SICKLES & COOK
vs.
STEAMBOAT COMPANY.

Whereupon the defendants, by their counsel, prayed the court to instruct the jury, that if the jury believe, from the evidence, that the defendants agreed with the plaintiffs that they, the said plaintiffs, might, at their own expense, place the cut-off, called Sickles' cut-off, on the engine of the defendants' boat, called the Columbia, that they, the said plaintiffs, might exhibit the qualities and usefulness of the said machine to the public, and thereby facilitate the introduction of the same into use on board the national steam ships, and other steam vessels sailing on the waters of the Potomac river and the Chesapeake bay; and that if, on the trial of the same on board the Columbia, the said cut-off should be approved of, and the defendants should wish to purchase the same, the terms of said purchase should be afterwards determined on between the said parties; but if the said cut-off should not be approved of, or the terms proposed by the plaintiffs to the defendants, for the use thereof, should be such that the said defendants could not accede to, the said plaintiffs were to take the said cut-off from the said boat at their own expense, and reinstate the boat and her engine in the same condition in which she was before the application of the said cut-off thereto; and that the said cut-off was placed on the said boat pursuant to said agreement and permission as aforesaid, and not pursuant to any such contract as is set out in the first count in the plaintiffs' declaration; and that the said plaintiffs have made no definite proposition to the said defendants for the sale and use of the said cut-off, and have not been refused permission by the defendants to remove the same from their said boat, then the plaintiffs are not entitled to recover in this action, altho' the jury should believe from the evidence that the said machine was approved of, and has been used by the said defendants; which instruction the court refused to give, there being only two judges on the bench, and they being divided in opinion on said instruction; to which refusal the defendants, by their counsel, excepted, and prayed the court that this their bill of exceptions may be signed and sealed, which is done, this 25th day of May, 1847.

JAMES S. MORSELL, [SEAL.]
JAS. DUNLOP. [SEAL.]

Defendants' 2d bill of exceptions.—Defendants' 2d bill of exceptions.

SICKLES & COOK
vs.
STEAMBOAT COMPANY.

And the defendants, by their counsel, further prayed the court to instruct the jury, that if the jury believe, from the said evidence, that the contract, set forth in the first count in the plaintiffs' declaration, was made between the plaintiffs and the defendants on the 18th of January,

1844, and it was agreed by the parties that the same was to be reduced to writing and signed by the parties, and a copy thereof delivered to each, and the said contract not having been reduced to writing pursuant to the said agreement, it was subsequently agreed by the said parties that the said cut-off should be placed by the plaintiffs in the engine of the defendants' said boat at plaintiffs' costs, and if the same should be approved of, and the defendants desired to purchase the same, that the terms of said purchase should be agreed upon by the said plaintiffs and the said defendants; but if the said cut-off was not approved, or the the terms offered by the said plaintiffs were such that the said defendants could not approve of the same, that the said cut-off should be removed from the engine on the said boat at the cost of the plaintiffs, and the same restored to the condition it was in before the said cut-off was attached thereto; and that the said William Gunton, [who] was then president of the said company, addressed the letter aforesaid, of the 11th day of January, 1845, to Messrs. Tho. W. & R. C. Smith, of Alexandria, (copied in page ,) and the same was afterwards, and within a few days from the date thereof, read by the plaintiff, Truman Cook, who did not deny the statements relative to the terms of agreement between the said parties for the use of the said cut-off in the said letter contained, but stated at one time that it was just such a letter as he expected the said Gunton would write to said Smith, and at another that it was just such a letter as the said Gunton ought to have written, then the jury may infer from the said testimony that the said contract, of the 18th June, 1844, if they believe such contract was ever executed, was afterwards abandoned by the said parties, and that detailed by the said Gunton, in the said letter of the 11th day of January, 1844, adopted in lieu thereof; and, if they so believe from the said evidence, the said plaintiffs are not entitled to recover in this action; which said instruction the court refused to give; to which refusal the said defendants, by their said counsel, excepted, and prayed that this bill of exceptions be signed and sealed, which is done this 25th day of May, 1847.

JAS. S. MORSELL, [SEAL.]
JAS. DUNLOP. [SEAL.]

Defendants' 3d bill of exceptions.—Defendants' 3d bill of exceptions.

SICKLES & COOK
vs.
STEAMBOAT CO.

And the said defendants, by their counsel, prayed the court further to instruct the jury, that if the jury believe, from the evidence, that the contract set out in the first count of the declaration, and alleged to have been made by the plaintiffs with their then president, Wm. Gunton, was never authorized by a board or quorum of the directors, as provided by their said charter of incorporation, and was never sanctioned and approved of by such quorum or board of said directors, and that the said Wm. Gunton, their president, did not act within the scope of his legiti-

mate authority in making such a contract with the plaintiffs, on the part of the company, that then the plaintiffs are not entitled to recover for the said cut-off in this action; which instruction the court refused to give; to which refusal the defendants, by their counsel, excepted, and prayed that this their bill of exceptions may be signed and sealed, which is done.

JAMES S. MORSELL, [SEAL.]
JAMES DUNLOP. [SEAL.]

Defendants' 4th bill of exceptions.—Defendants' 4th bill of exceptions.

SICKLES & COOK
vs.
STEAMBOAT CO.

The defendants, by their counsel, further prayed the court to instruct the jury, that if the jury believe, from the evidence, that the contract set out in the first count of the declaration, and alleged to have been made by the plaintiffs and Wm. Gunton, the president of the defendants' said company, was never authorized by a board or quorum of the directors of said company, as provided by their charter of incorporation, and was never sanctioned or approved of by such board or quorum of the said directors, and that the said William Gunton, in making such contract with the plaintiffs, if the jury believe the same to have been made by him, did not act within the scope of his authority as such president, that then the said contract is void as respects the said defendants, and the said plaintiffs are not entitled to recover under the said first count in their declaration; which instruction the court refused, but granted the same, with the following modification: but if, from the evidence, the jury shall find that William Gunton, the president of the defendants' company, and acting as their general agent, made with the plaintiffs the contract set out in the first count of the said declaration, and that the plaintiffs, under the said contract, put the said machine on the defendants' boat, and the same was used by the defendants at the time and times mentioned in the said count, and that the same was beneficial to the defendants, then the plaintiffs are entitled to recover on the said first count, notwithstanding the jury shall find that the terms of the said contract were not communicated to the defendants, and the said William Gunton reported to the said defendants a different contract; to which refusal of the said instruction and modification thereof, the defendants, by their counsel, except, and prayed that this their bill of exceptions may be signed and sealed, which is done this 25th day of May, 1847.

JAS. S. MORSELL, [SEAL.]
JAS DUNLOP. [SEAL.]
Test: W. BRENT, *Clerk*.

Writ of error produced.

And whereas, afterwards, to wit, on the second day of June, in the year of our Lord one thousand eight hundred and forty-seven, the said

defendants, by their attorney aforesaid, produced and filed in court here the United States writ for the correcting of errors, of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, sitting for the county of Washington; and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of the proceedings, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereunto annexed, is hereby transmitted to the said Supreme Court accordingly.

Certificate and seal.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, this 15th day of November, 1847.

[SEAL.]

W. BRENT, *Clerk.*

Filed 4th December, 1848.